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**UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

ACE MARINE RIGGING &  
SUPPLY, INC.,

Plaintiff,

v.

VIRGINIA HARBOR SERVICES,  
INC., et al.,

Defendants.

Case No. SACV11-00436-GW  
(FFMX)

**[PROPOSED] PROTECTIVE  
ORDER**

Magistrate Judge: Hon. Frederick F.  
Mumm  
Courtroom: E-9<sup>th</sup> Floor

**NOTE CHANGES MADE BY THE  
COURT**

1 WHEREAS, Plaintiff Ace Marine Rigging & Supply, Inc., on behalf of itself  
2 and the Class (“Plaintiff”) and the undersigned Defendants, through their  
3 respective counsel of record, having stipulated to the following protective order  
4 pursuant to Fed. R. Civ. P. 26(c) (“Protective Order”) to govern the production of  
5 documents and things, the filing of documents, and the disclosure of testimony in  
6 the above-captioned action (“Action”) with this Court, and having further moved  
7 this Court to so order this Protective Order; and

8 WHEREAS, the Court has reviewed the terms and conditions of this  
9 Protective Order submitted by the parties,

10 It Is Hereby ORDERED That:

11 **A. Scope**

12 1. This Protective Order governs the use and handling of  
13 documents, testimony, interrogatory responses, responses to requests for  
14 admission, and other information, including all copies, excerpts and summaries  
15 thereof produced or supplied by Defendants, Plaintiff or other individuals or  
16 entities, including non-parties to this action.

17 2. Under this Protective Order, any producing or supplying party  
18 (hereafter “producing party”) shall have the right to identify and designate as  
19 “Confidential” any material and/or information it produces or provides, which the  
20 party reasonably believes (i) is not in the public domain (i.e., not generally known  
21 and not reasonably ascertainable by proper means), and (ii) contains any non-  
22 public trade secret or confidential research, development, or commercial  
23 information as such terms are used in Fed. R. Civ. P. 26(c)(1)(G). The party will  
24 designate such material and/or information as confidential (hereafter “designated  
25 material”) if such party has a good faith belief that the designated material is  
26 entitled to confidential treatment.

27 3. Confidential information as used herein means any designated  
28 material that is designated by the producing party as “Confidential” pursuant to

1 this Protective Order, whether it is a document or information contained in a  
2 document, disclosed during a deposition, ~~or other testimony~~, (FFM) disclosed in  
3 an interrogatory answer or otherwise disclosed.

4 4. Material that is designated as confidential information and  
5 which a party believes to be extremely sensitive confidential and/or proprietary  
6 information, the disclosure of which, even limited to the restrictions placed on  
7 confidential information in this Protective Order, may compromise and/or  
8 jeopardize the producing party's business interests, may be designated as "Highly  
9 Confidential" by said party.

10 5. A party may designate as Confidential or Highly Confidential  
11 material that is in the possession of a third party if the material contains that party's  
12 Confidential or Highly Confidential information.

13 6. Any documents filed with the Court by a producing party in  
14 pleadings or otherwise by the party that produced those documents in this litigation  
15 shall no longer be deemed "Confidential" or "Highly Confidential" unless the party  
16 filing the documents has filed such information under seal pursuant to the  
17 procedures provided herein.

18 7. Any material **designated "Confidential" or "Highly**  
19 **Confidential"** produced in this litigation shall be used only for purposes of this  
20 litigation. ~~including material that has not been designated as "Confidential" or~~  
21 ~~"Highly Confidential."~~ Such information shall not be used for any business,  
22 competitive, personal, private, public or other purpose. ~~No material shall be~~  
23 ~~disclosed to any party or counsel who seeks at any time to pursue claims other than~~  
24 ~~these Class Claims. (FFM)~~

25 **B. Designation of Confidentiality**

26 Documents or information may be designated Confidential or Highly  
27 Confidential within the meaning of this Protective Order as follows:  
28

1           8.     Specific documents produced by a party shall, if appropriate, be  
2 designated as Confidential or Highly Confidential by marking each page of the  
3 document containing Confidential or Highly Confidential information with:  
4 “Confidential,” “Confidential - Subject To Protective Order,” “Highly  
5 Confidential” or “Highly Confidential - Subject To Protective Order.”

6           9.     In the case of interrogatory answers and responses to requests  
7 for admissions, if appropriate, the designation of Confidential or Highly  
8 Confidential information shall be made by means of a statement in the answers or  
9 responses specifying that the answers or responses or specific parts thereof are  
10 designated Confidential or Highly Confidential. The following shall be placed on  
11 each page of interrogatory answers or responses to requests for admission  
12 containing Confidential Information or Highly Confidential information: “Contains  
13 Confidential Information” or “Contains Highly Confidential Information.”

14           10.    In the case of depositions and the information contained in  
15 depositions (including exhibits), designation of the portions of the transcript  
16 (including exhibits) that contain Confidential Information or Highly Confidential  
17 Information shall be made by a statement to such effect on the record in the course  
18 of the deposition by counsel for the party or the witness producing such  
19 information, or by letter from such counsel within thirty (30) days of receipt of the  
20 deposition transcript or copy thereof (or written notification that the transcript is  
21 available). The entire deposition transcript (including exhibits) shall be treated as  
22 Highly Confidential under this Protective Order until the expiration of the above-  
23 referenced thirty-day period for designation, except that the deponent may review  
24 the transcript of his or her own deposition during this thirty-day period. The  
25 following shall be placed on the front of the original deposition transcript and each  
26 copy of the transcript containing Confidential Information or Highly Confidential  
27 Information: “Contains Confidential information” or “Contains Highly  
28 Confidential Information.” To the extent possible, the court reporter shall

1 segregate into a separate transcript information designated as “Confidential” or  
2 “Highly Confidential.” The separate transcript containing “Confidential” or  
3 “Highly Confidential” information shall have page numbers that correspond to  
4 blank or redacted pages in the main transcript and each such page will be marked  
5 as “Confidential” or “Highly Confidential.” If all or part of a videotaped  
6 deposition is designated as Confidential or Highly Confidential, the videocassette  
7 or other videotape container shall be so labeled.

8           11. To the extent that information stored or recorded in the form of  
9 electronic or magnetic media (including information, files, databases, or programs  
10 stored on any digital or analog machine-readable device, computers, discs,  
11 networks or tapes) (“computerized material”) is produced by any party in such  
12 form, the producing party may designate such matter as Confidential or Highly  
13 Confidential by cover letter referring generally to such matter or by labeling such  
14 media accordingly.

15           12. To the extent that any party or counsel for any party creates,  
16 develops or otherwise establishes on any digital or analog machine-readable  
17 device, recording media, computer, disc, network, tape, file, database or program  
18 information designated Confidential and/or Highly Confidential, that party and/or  
19 its counsel must take all necessary steps to ensure that access to such media is  
20 properly restricted to those persons who, by the terms of this Protective Order, may  
21 have access to Confidential Information and/or Highly Confidential Information.  
22 Whenever any party to whom computerized material designated as Confidential or  
23 Highly Confidential is produced reduces such material to hard-copy form, such  
24 party shall mark such hard-copy form as provided above.

25 **C. Disclosure of Confidential Information**

26           13. Counsel of record are responsible for employing reasonable  
27 measures, consistent with this Protective Order, to control access to and  
28 distribution of information designated Confidential.

1                   14. Access to information designated Confidential pursuant to this  
2 Protective Order shall be limited to:

3                   a. A director, officer, employee or agent of any party to the  
4 Action to whom the designated material is shown for purposes of the Action;

5                   b. Counsel for any party to the Action (including members,  
6 of counsel or associates of such counsel's firm) or in-house counsel for any party  
7 to the Action, as well as their paralegal, secretarial, investigative, and clerical  
8 personnel who are assisting such counsel in the Action;

9                   c. Outside photocopying, data processing or graphic  
10 production services employed by the parties to assist in the litigation;

11                  d. Any individual who prepared, received, reviewed, is  
12 referred to in, or otherwise had been provided access to designated material prior  
13 to its production in the Action;

14                  e. Any witness or potential witness as to whom a party has  
15 a good faith basis to believe that such person has relevant information regarding  
16 the designated material;

17                  f. Any expert or consultant (or any employee of such expert  
18 or consultant) who is not employed by or affiliated with any party to the Action  
19 and is retained by a party for the purposes of consulting and/or testifying in the  
20 Action;

21                  g. Any current employee of a party producing designated  
22 material;

23                  h. This Court or any other Court exercising jurisdiction with  
24 respect to the Action, including Court personnel, jurors, and persons recording,  
25 taking, or transcribing testimony or argument at any deposition, hearing, trial or  
26 appeal in the Action; and  
27  
28

i. Any other person pursuant to a court order or to whom the producing party agrees to provide such disclosure so long as the producing party grants permission in writing or on the record in advance of disclosure.

**D. Disclosure of Highly Confidential Information**

15. Counsel of record are responsible for employing reasonable measures, consistent with this Protective Order, to control access to and distribution of information designated Highly Confidential.

16. Access to information designated Highly Confidential pursuant to this Protective Order shall be limited to:

a. Outside counsel for any party to the Action (including members, of counsel or associates of such counsel's firm) as well as their paralegal, secretarial, investigative, and clerical personnel who are assisting such counsel in the Action;

b. Outside photocopying, data processing or graphic production services employed by the parties to assist in the litigation;

c. Any individual who prepared, received, reviewed, is referred to in, or otherwise had been provided access to designated material prior to its production in the Action;

d. If a corporate party as defined in Paragraphs 14-16, 18, 20, 24-25, 27, 29 or a corporate Named Co-Conspirator as defined in Paragraphs 31-32 of the complaint filed in this Action is referenced in information designated Highly Confidential, any past or present employee of that corporate party or Named Co-Conspirator to whom the receiving party has a good faith belief is the subject of said reference;

e. Any expert or consultant (or any employee of such expert or consultant) who is not employed by or affiliated with any party to the Action and is retained by a party for the purposes of consulting and/or testifying in the Action;

1 f. Any current employee of a party producing designated  
2 material;

3 g. This Court or any other Court exercising jurisdiction with  
4 respect to the Action, including Court personnel, jurors, and persons recording,  
5 taking, or transcribing testimony or argument at any deposition, hearing, trial or  
6 appeal in the Action; and

7 h. Any other person pursuant to a court order or to whom  
8 the producing party agrees to provide such disclosure so long as the producing  
9 party grants permission in writing or on the record in advance of disclosure.

10 17. Each person to whom disclosure is made pursuant to  
11 Paragraphs 14(a), 14(e), 14(f), and 16(d) and 16(e) shall be given a copy of this  
12 Protective Order and shall sign a declaration prior to disclosure, a copy of which is  
13 attached hereto as Exhibit A, agreeing that he or she is bound by the jurisdiction of  
14 this Court and the terms of this Protective Order. The party (or its counsel)  
15 obtaining the declaration shall provide copies of each declaration to all other  
16 counsel of record.

17 **E. Restrictions And Procedures Regarding Confidential Or Highly**  
18 **Confidential Material**

19 18. Persons receiving Confidential or Highly Confidential material  
20 are prohibited from disclosing it to any person except in conformance with this  
21 Protective Order. The recipient of any Confidential or Highly Confidential  
22 material that is provided under this Order shall maintain such information in a  
23 secure and safe area and shall exercise the same standard of due and proper care  
24 with respect to the storage, custody, use and/or dissemination of such information  
25 as is exercised by the recipient with respect to its own proprietary information.

26 19. If any party or counsel for any party wishes to disclose any  
27 Confidential or Highly Confidential information in any affidavits, briefs,  
28 memorandum of law, oral argument, or other papers filed in the Court in this



1 action, such papers or transcripts may be filed under seal only upon separate,  
2 specific motion and later order of the Court. For purposes of this paragraph, if any  
3 party or counsel for any party intends to submit any affidavits, briefs,  
4 memorandum of law, or other papers disclosing the Confidential or Highly  
5 Confidential information of another party in this action, such disclosing party shall  
6 contemporaneously file a motion provided for in this paragraph requesting that the  
7 designated material be filed under seal.

8           20. If, at any time, any Confidential or Highly Confidential  
9 information in the possession, custody or control of any person other than the  
10 person who originally produced such information is subpoenaed by any court,  
11 administrative agency, legislative body or other person or entity, the party or  
12 person to whom the subpoena or request is directed shall promptly provide written  
13 notice to the person who originally produced such information and/or to the  
14 designating party, which notice shall include the date set for the production of the  
15 subpoenaed information. Within seven (7) days, the producing party will inform  
16 the subpoenaed party either that it does not object to production of the information  
17 or that it will seek court protection to prevent the production.

18           21. ~~If the original producing party responds that it will not seek~~  
19 ~~court protection, then the subpoenaed party may produce the information. If the~~  
20 ~~original producing party fails to provide the subpoenaed party with a response as to~~  
21 ~~whether or not it will object to or seek court protection, the subpoenaed party may~~  
22 ~~produce the information after seven (7) days following the subpoenaed party's~~  
23 ~~notice of the subpoena to the original producing party. If the original producing~~  
24 ~~party does elect to seek court protection, then the subpoenaed party will not~~  
25 ~~produce the subpoenaed information on the date set for the production of the~~  
26 ~~subpoenaed information. Notwithstanding the foregoing, the original producing~~  
27 ~~party waives its right to object to production if it does not object to production or~~  
28 ~~seek court protection on or before the date that production is due, and, in that~~

1 ~~circumstance, the subpoenaed party may provide the subpoenaed information.~~

2 **Nothing herein relieves any party or person from complying with any such**  
3 **validly issued subpoena absent order from the issuing body to the contrary.**  
4 **(FFM)**

5           22. Nothing herein shall restrict or limit the use of information or  
6 documents designated as “Confidential” or “Highly Confidential” at any hearing or  
7 trial, which is expected to be the subject of a further protective order and/or  
8 appropriate court orders. Prior to any hearing or trial at which the use of such  
9 information or documents is anticipated, the parties shall meet and confer  
10 regarding the use of confidential materials containing such designations. If the  
11 parties cannot agree, the parties shall promptly request the Court to rule on such  
12 procedures.

13 **F.   Objections to Designations**

14           23. A party shall not be obliged to challenge the propriety of a  
15 Confidential or Highly Confidential information designation at the time made, and  
16 a failure to do so shall not preclude a subsequent challenge thereto. In the event a  
17 party objects to the designation of any material under this Protective Order, the  
18 objecting party shall consult with the designating party to attempt to resolve their  
19 differences. If the parties are unable to reach an accord as to the proper  
20 designation of the material, after giving notice to the party who designated the  
21 material, the objecting party may apply to the Court for a ruling that the material  
22 shall not be so designated. **Any such motion must comply with Local Rule 37.**

23 **(FFM)** If such a motion is made, the designating party has the burden of  
24 establishing that the designation is proper. If no such motion is made, the material  
25 will retain its designation. Any documents or other material that has been  
26 designated Confidential or Highly Confidential shall be treated as Confidential or  
27 Highly Confidential until such time as the Court or any magistrate to whom this  
28 matter is assigned rules that such material should not be treated as Confidential or

1 Highly Confidential. Nothing in this Protective Order is intended to create a  
2 presumption in favor of confidentiality, and this Protective Order does not alter  
3 applicable law regarding burdens of proof when challenging a Confidential or  
4 Highly Confidential designation.

5 **G. Preservation of Rights and Privileges**

6           24. Nothing contained in this Protective Order shall affect the right,  
7 if any, of any party or witness to make any other type of objection, claim, or other  
8 response to discovery requests, including, without limitation, interrogatories,  
9 requests for admissions, requests for production of documents or questions at a  
10 deposition. Nor shall this Protective Order be construed as a waiver by any party  
11 of any legally cognizable privilege to withhold any Confidential or Highly  
12 Confidential information, or of any right which any party may have to assert such  
13 privilege at any stage of the litigation.

14 **H. Return or Destruction of Material**

15           25. Within one hundred twenty (120) days after the final resolution  
16 of this action, all Confidential or Highly Confidential information shall be returned  
17 to counsel for the party that produced it or shall be destroyed. As to the material  
18 that contains or reflects Confidential or Highly Confidential information, but that  
19 constitutes or reflects counsel's work product, counsel of record for the parties  
20 shall be entitled to retain such work product in their files in accordance with the  
21 provisions of this Protective Order, so long as it is clearly marked to reflect that it  
22 contains information subject to this Protective Order. Counsel shall be entitled to  
23 retain pleadings, affidavits, motions, briefs, other papers filed with the Court,  
24 deposition transcripts, and the trial record (including exhibits) even if such  
25 materials contain Confidential or Highly Confidential information, so long as such  
26 materials are clearly marked to reflect that they contain such information.

1 **I. Inadvertent or Unintentional Disclosure**

2           26. The inadvertent or unintentional disclosure by the producing  
3 party of documents or information subject to a claim of privilege, including, but  
4 not limited to, the attorney-client privilege or work product doctrine, regardless of  
5 whether the material was so designated at the time of disclosure, shall not be  
6 deemed a waiver in whole or in part of a party's claim of privilege.

7           27. A producing party that inadvertently fails to designate material  
8 as Confidential or Highly Confidential pursuant to this Protective Order at the time  
9 of its production shall be entitled to make a correction to its designation. Such  
10 correction and notice thereof shall be made in writing within twenty (20) days of  
11 discovery of the inadvertent mis-designation, accompanied by substitute copies of  
12 each item of material, appropriately designated. Those individuals who received  
13 the material prior to notice of mis-designation by the producing party shall within  
14 five (5) days of receipt of the substitute copies, destroy or return to the law firm  
15 representing the producing party all copies of such mis-designated documents.  
16 Those individuals who reviewed the mis-designated material prior to notice of the  
17 mis-designation by the producing party shall abide by the provisions of this  
18 Protective Order with respect to the use and disclosure of any information  
19 contained in the mis-designated material.

20           28. If a party has inadvertently or mistakenly produced information  
21 subject to a claim of privilege, or otherwise protected from disclosure, the  
22 producing party shall, within twenty (20) days of discovery of such inadvertent or  
23 mistaken production, serve a written request upon the receiving party for return of  
24 the same. The receiving party of inadvertently produced material will return such  
25 item or items and all copies thereof within ten (10) days of receiving a written  
26 request from the producing party for the return of same. If the receiving party  
27 challenges a claim that such information is privileged or otherwise protected from  
28 disclosure, the receiving party may, in connection with any good faith challenge,

1 make reference to the contents of the inadvertently produced material in a  
2 document filed with the Court only if such document is filed in connection to a  
3 motion challenging or opposing the assertion of privilege, and only so long as such  
4 filing is made under seal. If requested by the receiving party, the producing party  
5 shall provide the purportedly privileged material to the Court for in-camera review.  
6 If the Court sustains the privilege claim of the producing party with respect to  
7 inadvertently produced material, the receiving party shall, within five (5) days of  
8 the Court's Order, destroy any notes relating to the material and advise the  
9 producing party in writing of the destruction.

10           29. A party's compliance with the terms of this Protective Order  
11 shall not operate as an admission that any particular material is or is not (a)  
12 confidential, (b) privileged or (c) admissible in evidence at trial.

13           30. A non-party who is obligated to provide discovery in this action  
14 by deposition, production of documents or otherwise, shall be afforded the  
15 protections of this Protective Order upon signing the declaration attached hereto as  
16 Exhibit A. By signing such declaration, the nonparty also agrees to be bound by  
17 the terms of this Protective Order.

18           31. Upon the final resolution of this Action, any party may seek  
19 leave to reopen this Action to enforce the provisions of this Protective Order.

20           32. This Protective Order is binding on all parties to this Action and  
21 also on all nonparties who have signed the attached Exhibit A, and this Protective  
22 Order shall remain in force and effect until modified, superseded, or terminated by  
23 consent of the parties or by further Order of the Court.

24  
25 SO ORDERED this 16th day of May, 2011

26                           /S/ FREDERICK F. MUMM  
27                           Honorable Frederick F. Mumm  
28                           United States Magistrate Judge